

### **REMARKS/ARGUMENTS**

The Applicants originally submitted Claims 1-23 in the application. In the present response, the Applicants have amended independent Claims 1, 11, and 21. Support for the amendment can be found, for example, in paragraph 23 and Figure 2 of the original specification. No other claims have been canceled or added. Accordingly, Claims 1-23 are currently pending in the application.

#### **I. Rejection of Claims 1-2, 5, 8-12, 15, and 18-23 under 35 U.S.C. §102**

The Examiner has rejected Claims 1-2, 5, 8-12, 15, and 18-23 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent Application Publication No. 2002/0102978 by Yahagi. The Applicants believe the invention as presently claimed, however, is not taught by Yahagi. More specifically, the Applicants fail to find where Yahagi teaches evaluating at least two different candidate wireless communication networks based on at least one data communication quality parameter determined by a calculated time needed for a data transfer between a mobile communication device and a communication server associated with each of the at least two different candidate wireless communication networks, wherein calculating the time is performed by the mobile communication device as recited in now amended independent Claims 1, 11, and 21.

Yahagi teaches a user terminal 10 sends a request signal to and receives a response signal from each of a plurality of wireless networks 11, 12, and 13. Each of the wireless networks formulates the response signal with tariff data from a database 33 and a congestion level detected by a traffic monitor 34 that constantly monitors the congestion level of the network. (*See*, for example, paragraphs 24-26 and Figure 1.) Thus, Yahagi teaches that a mobile communication device sends a

request signal to a plurality of wireless communication networks which in response sends a signal back to the mobile communication device comprised of tariff information and a traffic congestion level of the respective network. Yahagi does not teach evaluating one of at least two wireless communication networks based on a calculation of a time needed for a data transfer between a mobile communication device and a communication server associated with the network as is now recited in amended independent Claims 1, 11, and 21. On the contrary, Yahagi teaches evaluating one of at least two wireless communication networks based on a traffic monitor of the network which determines a congestion level for the network. Furthermore, Yahagi does not teach an evaluation based on a calculation performed by a mobile communication device. Rather, Yahagi teaches an evaluation based on a determination of traffic congestion performed by the network.

As such, Yahagi does not anticipate now amended independent Claims 1, 11, and 21 and Claims that depend thereon. Accordingly, the Applicants respectfully request the Examiner to withdraw the §102(b) rejection of Claims 1-2, 5, 8-12, 15, and 18-23 and allow issuance thereof.

## **II. Rejection of Claims 3-4, 6-7, 13-14, and 16-17 under 35 U.S.C. §103**

The Examiner has rejected Claims 3-4 and 13-14 under 35 U.S.C. §103(a) as being unpatentable over Yahagi as applied to Claims 1 and 11 in view of U.S. Patent Application Publication No. 2002/0087674 by Guilford, *et al.* The Examiner has rejected Claims 6-7 and 16-17 under 35 U.S.C. §103(a) as being unpatentable over Yahagi as applied to Claims 1 and 11 in view of U.S. Patent Application Publication No. 2004/0009751 by Michaelis, *et al.* As established above, Yahagi does not teach evaluating at least two different candidate wireless communication networks based on at least one data communication quality parameter determined by a calculated time needed

for a data transfer between a mobile communication device and a communication server associated with each of the at least two different candidate wireless communication networks, wherein calculating the time is performed by the mobile communication device as recited in now amended independent Claims 1, 11, and 21.

Furthermore Yahagi does not suggest the same. Yahagi explicitly teaches detection of a traffic congestion level of one of a plurality of wireless networks by a traffic monitor 34. (See paragraph 26.) The Applicants fail to find where Yahagi evaluates at least two candidate wireless networks based on a data transfer initiated by a user terminal and just between the user terminal and a communications server associated with the wireless network. Rather, Yahagi evaluates at least two candidate networks based on the traffic congestion of an entire network. The network-determined traffic congestion level of Yahagi does not necessarily correlate with the time it takes to complete a data transfer between a mobile communication device and a communications server associated with the wireless network. As such, Yahagi does not teach and suggest every element of now amended independent Claims 1 and 11 and, therefore, does not establish a *prima facie* case of obviousness of amended independent Claims 1 and 11.

Guilford or Michaelis have not been cited to cure this deficiency of Yahagi but teach GSM, UMTS, GPRS, HSCSD, and/or EDGE networks and a transfer time communication quality parameter, respectively. (See Examiner's Action electronically sent August 15, 2007, pages 4-5.) Additionally, the Applicants do not find where either Guilford or Michaelis cures the deficiencies of Yahagi. As such, the combination of Yahagi with either Guilford or Michaelis does not establish a *prima facie* case of obviousness of pending amended independent Claims 1 and 11 and Claims that

depend thereon. Accordingly, the Applicants respectfully request the Examiner to withdraw the §103(a) rejection of Claims 3-4, 6-7, 13-14, and 16-17 and allow issuance thereof.

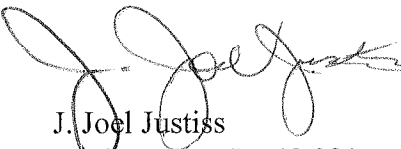
### **III. Conclusion**

In view of the foregoing amendment and remarks, the Applicants now see all of the Claims currently pending in this application to be in condition for allowance and therefore earnestly solicit a Notice of Allowance for Claims 1-23.

The Applicants request the Examiner to telephone the undersigned attorney of record at (972) 480-8800 if such would further or expedite the prosecution of the present application. The Commissioner is hereby authorized to charge any fees, credits or overpayments to Deposit Account 08-2395.

Respectfully submitted,

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Dated: November 15, 2007

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